

CIVIL SERVICE COMMISSION MINUTES
JULY 5, 2006

A regular meeting of the Civil Service Commission was held at 2:30 p.m. in Room 358 of the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

A.Y. Casillas
Barry I. Newman
Francesca Krauel
Cheryl Fisher

Absent was:

W. Dale Bailey

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamary, Executive Officer
William Smith, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

Approved
Civil Service Commission

August 2, 2006

COUNTY OF SAN DIEGO
CIVIL SERVICE COMMISSION MINUTES
July 5, 2006

1:45 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
4,5,6,7			10

COMMENTS: Motion by Casillas to approve all items not held for discussion; seconded by Fisher. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.

A. Commissioner Newman: Rod M. Toothacre, Esq., on behalf of **Sherilyn Mabeus (2005-15)**, Deputy Sheriff-Detentions/Court Services, alleging retaliation discrimination by the Sheriff's Department.

B. Commissioner Newman: **Todd Walsh**, Environmental Health Specialist II, appealing an Order to Refrain from Incompatible Activity from the Department of Environmental Health.

C. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Subdivision (a) of Government Code Section 54956.9)
The Copley Press, Inc. v. Superior Court, Court of Appeal No. D042251; California Supreme Court No. S128603

OPEN SESSION AGENDA
County Administration Center, Room 358

MINUTES

1. Approval of the Minutes of the regular meeting of July 5, 2006.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Krauel: **Laura Stevens**, Intermediate Clerk, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

Confirmed.

3. Commissioner Fisher: Julie Buechler, Esq., on behalf of **2006-03**, appealing an Order from the Sheriff's Department.

Confirmed.

DISCRIMINATION

Findings

4. Commissioner Newman: Rod M. Toothacre, Esq., on behalf of **Sherilyn Mabeus (2005-15)**, Deputy Sheriff-Detentions/Court Services, alleging retaliation discrimination by the Sheriff's Department.

FINDINGS & RECOMMENDATIONS:

Appellant Sherilyn Mabeus was a probationary Sheriff's Detentions Nurse (Class #4548) who was not retained during probation. Prior to transferring to Detentions Nurse, she was a Deputy Sheriff Detentions, to which position she was returned after her non-retention. Shortly after being informed of her non-retention, she filed a complaint of discrimination with the Civil Service Commission alleging that her non-retention was in retaliation for several incidents in which she reported several health and safety deficiencies to her supervisors, and for her filing of two complaints with Department's Internal Affairs Office. The matter was referred to the County Office of Internal Affairs ("OIA") for investigation. OIA found that Appellant established a prima facie case of discrimination based on retaliation, and that there was probable cause to hold a

Commission hearing. OIA's finding was predicated, in large part, on the absence of any negative ratings or comments on any performance evaluations. Ten Monthly Evaluations rated her as "average" with no problems noted. One mid-probationary Performance Review rated her "fully competent" with no problems noted.

At the outset of the Commission hearing, Appellant was afforded the opportunity to request a closed hearing pursuant to San Diego Police Officers' Association v. City of San Diego Civil Service Commission (2002) 104 Cal. App. 4th 275 but she waived the request.

While the contrast between Appellant's performance evaluations and her non-retention evidenced significant supervisory deficiencies in the Department's Medical Division, under Article IX of the County Charter and Rule 4.2.5 of the Civil Service Rules, the Commission has no jurisdiction to hear appeals concerning a probationary employee's "separation or performance appraisal." In this appeal, the Commission's jurisdiction is limited to determining whether Appellant has suffered discrimination in violation of the County regulations or State law. At the Commission hearing, Appellant failed to prove that her non-retention was the result of discrimination or retaliation. Rather, the evidence produced at the hearing demonstrated that Appellant's non-retention was the result of the Director of Nursing's cumulative impression of her as uncooperative and resistant, and as causing unnecessary stress to her co-workers and immediate supervisors. The lack of any comments to that effect in Appellant's performance evaluations was the result of a lack of training of the rating supervisors in the use and purpose of such evaluations, as well as a failure to integrate the evaluations with the Nursing Director's concerns during probation. However, the evidence did not indicate the non-retention was the result of prohibited discrimination.

It is therefore recommended that Ms. Mabeus' Rule VI discrimination complaint be denied; that the Commission approve and file this report with the appended OIA Final Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Newman to approve findings and recommendations; seconded by Casillas. Carried.

5. Commissioner Newman: Melissa L. Bustarde, Esq., on behalf of **Cynthia Miller**, Psychiatric Nurse, alleging retaliation discrimination and harassment by the Health and Human Services Agency.

Gayle Mayfield-Venieris, Esq. representing Ms. Miller addressed the Commission regarding back pay on a previous discrimination complaint Ms. Miller filed with the Office of Internal Affairs on October 10, 2003.

Bob Girard, Department Personnel Officer, explained that Ms. Miller was promoted as the result of the OIA internal investigation, but there was no issue regarding back pay.

Lisa Gable and Rita Smith, from OIA, briefly explained the first investigation, and differentiated it from the current investigation now before the commission. Ms. Gable further explained that Ms. Miller had requested that the first investigation be re-done in order to address back pay. However, back pay is not a remedy in a complaint filed with the OIA and that investigation was not re-done.

FINDINGS & RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on June 1, 2005 the Commission appointed Barry I. Newman to investigate the complaint submitted by Cynthia Miller, alleging retaliation discrimination and harassment by the Health and Human Services Agency. In accordance with the established rules and procedures of the Civil Service Commission, this matter was referred to the Office of Internal Affairs (OIA) for investigation.

The Commission office was subsequently informed by OIA that a complaint on behalf of Cynthia Miller was filed with the Equal Employment Opportunity Commission (EEOC), raising the same, or similar allegations as the complaint filed with the Civil Service Commission. The Civil Service Commission held Ms. Miller's complaint in abeyance, pending the resolution of the EEOC complaint. EEOC concluded its investigation determining that it was ". . . unable to conclude that the information obtained establishes violations of the statutes." Ms. Miller, through her attorney, Gayle Mayfield-Venieris, has requested that the Civil Service Commission pursue its investigation. OIA has concluded its investigation and has reported back to the Commission its findings.

The undersigned Investigating Officer has taken into consideration all documentation presented. The

Investigating Officer concludes that: The evidence does not support a finding of probable cause that a violation of discrimination laws occurred; that Ms. Miller's Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Final Investigative Report with a finding of no probable cause that the Complainant has been discriminated against on any basis protected by law.

Motion by Newman to approve findings and Recommendations; seconded by Casillas. Carried.

INCOMPATIBLE ACTIVITY

Findings

6. Commissioner Newman: **Todd Walsh**, Environmental Health Specialist II, appealing an Order to Refrain from Incompatible Activity from the Department of Environmental Health.

FINDINGS & RECOMMENDATIONS:

Appellant Todd Walsh appeals an order from the Department of Environmental Health to refrain from incompatible activity. The appeal is under Rule VIII of the Civil Service Commission Rules. He is an Environmental Health Specialist II in the Department. He holds a part time position with LTA Enterprises certifying Percolation Test Reports on a County form. He was given permission by the Department to perform this type of work outside of his County employment. On September 11, 2005, he advocated on behalf of his private employer in opposition to a determination made by Department staff. Appellant's advocacy alerted the Department to a conflict of interest between Appellant's private employment and his County employment. The Department was concerned that Appellant's position with the County might unduly influence its staff. In addition to an actual conflict of interest, the Department was concerned about the appearance of impropriety. Thereupon, the Department issued its order. California law and County Policy and Procedures give the Department wide latitude in determining incompatible activities of its employees. Moreover, testimony and evidence presented at the Commission hearing revealed that Appellant's activities fell within specific County Policy prohibitions regarding incompatible activities. Accordingly, the Department was well within its rights in issuing the order.

It is therefore recommended that the Order to Refrain from Incompatible Activity be affirmed; that the Commission read

and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Newman to approve Findings and Recommendations; seconded by Fisher. Carried.

RECONSIDERATION

7. **Tami L. Walters**, Intermediate Clerk, Sheriff's Department, requesting reconsideration of the Commission's June 7, 2006 action denying her request for a Civil Service Rule X selection process hearing.

RECOMMENDATION: Deny Request.

Ms. Walters requested that the Commission reconsider its decision relating to her qualifications for the position of Latent Print Examiner. She reiterated that she spent 14 years with the Sheriff's Examiner's office in order to garner the experience needed for this position. Ms. Walters pointed out that DHR has now re-written the minimum from "latent print experience **or** finger print experience" to "latent print experience **and/or** finger print experience".

Janice Horning, representing DHR, explained that there are two levels above the latent print examiner position. She stated that she has outlined the process for Ms. Walters and has encouraged her to take the career path in order to reach the latent print examiner position.

The Commission understands the hard work Ms. Walters has put forth and all the voluntary training hours she has accumulated, however, the Civil Service Commission Rules must be followed by all employees to uphold the integrity of the personnel system.

Motion by Casillas to approve staff recommendation; seconded by Krauel. Carried.

OTHER MATTERS

Extension of Temporary Appointments

8. Health and Human Services Agency

18 Residential Care Worker Trainees (Michael Torrez, Nicole Kotzen, Raphael Huynh, Margarita Morales, Elvia Escobar, Frankie Simpson, Jason Gazaille, Brianna Herrera, Marquessa McDaniel, Menendres Morales, Akira Thompkins,

Halina Bohdal, Renee Dovidio, Ariana Velazquez, Akia Jones, Brent Looney, Jolita Rattei, Victoria Burgess)

- 2 Residential Care Workers I (Martin Mercado, Nikkia Johnson)

(Commissioner Newman requested that staff discuss with DHR the possibility of placing the position of Residential Care Workers into a separate category, due to the frequency and importance of these extensions).

- 43 Human Services Specialists (See attached list)

9. Department of the Alternate Public Defender

- 1 Deputy Alternate Public Defender I (Valoree Wortham)

RECOMMENDATION: Ratify Item Nos. 8 & 9.

Items 8 & 9 ratified.

INFORMATION

10. Fern Steiner, Esq., on behalf of **Laura Torbett**, former Head Staff Nurse, withdrawal of appeal of a Final Order of Removal and Charges from the Health and Human Services Agency. (Commissioner Krauel)

Withdrawn.

11. Public Input.

ADJOURNED: **3:30 p.m.**

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION:

AUGUST 2, 2006

HUMAN SERVICES SPECIALIST

NAME

ABDI ABDILLAHI
ALLEN ANDRUS
JANEETE ASTIAZARAN
TARA BENTHAM-JONES
MOLICA BORAMY
SHARON BRYANT
MANUEL CASTANEDA
DALILA CERVANTES
JEANETTE CRIM
DANIEL CUEVAS
ELISAMA DIAZ
ALBERTO GARCIA
RAMON GAVINO
DANNIELLE GOMPF
TINA HOGLUND
JUAN IZAGUIRRE
WENDY JIMENEZ
ELSA LUJANO
DENNIS MADDOCKS
JACQUELYNE MARQUEZ
TAYLOR MCDONALD
ERIKA MEDINA
DEBREWOK MICHAEL
MARK NAVARRO
VIANEY OCEGUEDA
CLAUDIA ORTIZ
IMELDA PANGILLNAN
VIVI RICHARDEZ
ALANE RIVERA
MARTHA RODRIGUEZ
TANIA SAKR
ESTHER SALAZAR
ENRIQUETA SALDIVAR
SENG SAVOEUN
JENNIFER SINSAY
DORALINA STEINER
DARAVONE SOUVANARAT
JAMES TEAR
ANY TRUONG
PAOLA VELARDE
CECILLA YACUTA
NORA YORO
SHAWANEE WHITE